

MARY A. CHRISTOPHER

IBLA 75-177

Decided February 21, 1975

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying reinstatement of oil and gas lease W 7125.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay advance rental timely where it is not shown that the failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence. Mistake as to the date the payment is due, misplacement of the courtesy notice, and the decease of appellant's husband some two years prior to the date payment is due, do not afford a sufficient predicate for reinstatement of an oil and gas lease.

APPEARANCES: Mary A. Christopher, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Mary A. Christopher has appealed to this Board from the September 27, 1974, decision of the Wyoming State Office, Bureau of Land Management, which denied her petition for reinstatement of her oil and gas lease W 7125, on the basis that her failure to make timely payment of the annual rental on or before the due date was not justifiable.

The rental payment was due in Cheyenne, Wyoming, on or before August 1, 1974. Appellant's payment, a check dated August 5, 1974, was sent by regular mail, postmarked August 6, 1974, and was not received by the Wyoming State Office until August 8, 1974.

Appellant's statement of reasons for appeal recites in applicable portion as follows:

Attached is my petition to reinstate the lease for 40 acres of land covered by the attached lease.

Due to the pressures and responsibilities since my husband's death, I put the notice of payment in my desk, and overlooked paying it, since I had thought it was due August 10th, and I am paid on August 5th, and I thought I would have plenty of time.

My husband was a petroleum engineer, and had hoped that this would help me in future years. We have had thousands of dollars in doctor bills, and anything that might help me after I retire would be most appreciated.

I do hope that you can see fit to reinstate this lease. My check is being held in the Wyoming office, and I would be glad to pay any additional fee you may deem necessary.

The law, 30 U.S.C. § 188(c) (1970), provides that a lease which has terminated by operation of law may be reinstated if the lessee shows to the satisfaction of the Secretary of the Interior that the failure to pay the rental on time was either justifiable or not due to a lack of reasonable diligence on his part. 43 CFR 3108.2-1(c)(2) defines reasonable diligence as follows:

* * * Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. * * *

[1] We find that appellant's failure to make timely payment of the rental was due to a lack of reasonable diligence and was not justifiable. See Alfred B. Tyler, Executor, 13 IBLA 316 (1973); Columbia Gas Transmission Corp., 13 IBLA 243 (1973).

Mailing a rental payment on August 5, 1974, cannot result in a payment being received on August 1, 1974. Appellant states that she believed the rental payment was not due until August 10, 1974, but there was no warrant for such a belief. The lease bears an effective date of August 1, 1967, and sec. 2(d) of the lease terms requires a lessee "[t]o pay the lessor in advance an annual rental * * *."

Appellant adverts to her husband's death as creating pressures and responsibilities which caused her to put the notice of payment due in her desk. However, she has not established sufficient proximity and causation to warrant reinstatement. Kenneth F. Santor, 13 IBLA 208 (1973). Moreover, the record shows that her late husband John Christopher, died on August 13, 1972, some two years before the crucial date, i.e. August 1, 1974.

This Board has held that:

Negligence, forgetfulness, or inadvertence do not justify failure to pay on time since they are events in the control of the lessee.

Jan R. Christensen, 15 IBLA 72, 75 (1974). See Louis Samuel, 8 IBLA 268, 274 (1972), in which we held that a delay in making payment is justifiable when it is caused by an event beyond the control of the lessee.

We must conclude that appellant has not demonstrated that her failure to pay the rental timely was "justifiable or not due to a lack of reasonable diligence," 30 U.S.C. § 188(c) (1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

